

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

CONTRACT FOR VESSEL REMOVAL DISPOSAL

Vessel Removal Contract No.

This Contract is between the State of Washington Department of Natural Resources, referred to as the DNR, and Global Diving & Salvage, Inc, referred to as the Contractor, for the express purposes described in the following provisions.

The overall purpose of this Contract is to:

The parties mutually agree to the terms, conditions and covenants described below, attached, or incorporated by reference as follows:

1.01 Rights and Obligations. *Attachment A* contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between the DNR and the Contractor, and obligations of both parties. All rights and specific obligations of the parties to this Contract shall be subject to and governed by Attachment A and other attachments each incorporated by reference, and by the Special Terms and Conditions.

SPECIAL TERMS AND CONDITIONS

2.01 Scope of Work. The detailed Scope of Work is described in the following:

Attachment B contains the detailed description of the work.

Attachment C contains the Hydraulic Project Approval (HPA).

3.01 Conduct of Work. The Contractor shall furnish all necessary qualified personnel, material, and equipment, and manage and direct the same to timely complete the work described in this Contract. Contractor shall pay Prevailing Wages in accordance with RCW 39.12.040.

4.01 Period of Performance.

(1) Effective Date: The period of performance shall begin on .

(2) Completion Date: This Contract shall terminate not later than .

5.01. Prevailing Wages. Contractor shall pay the applicable prevailing rate of wages to workers, laborers, or mechanics employed in the performance of the work in accordance with RCW 39.12. Contractor shall file a Statement of Intent to Pay Prevailing Wages with the DNR. Copies of the Statement shall be posted in the job site.

6.01 OSHA and WISHA Requirements. Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and the Washington Industrial Safety and Health Act of 1973 (WISHA). The Contractor shall comply with the standards and regulations issued under such Acts and certify that all items furnished and purchased under this Contract shall conform to them.

7.01 Performance Security. Contractor shall provide a performance security in an amount equal to thirty-four thousand seven hundred Dollars (\$34,700.00), within ten (10) business days after successful bid. The bond must guarantee the Contractor's performance of all provisions in this Contract, with the exception of the obligations under Hazardous Waste Indemnification sub-section. The bond must name State as the obligee.

A Letter of Credit may substitute for a performance bond unless prohibited by statute. If it is irrevocable, it allows the State to draw funds at will, and names State as beneficiary. A Letter of Credit must comply with Title 62A RCW, Article 5. A savings account assignment may substitute for a performance bond. Contractor shall not operate unless a performance security has been accepted by the State. If at any time the State decides that this security has become unsatisfactory, Contractor agrees to suspend operations and, within 24 hours of notification, to either replace the security with one acceptable to the State, or to supplement the amount of the existing security. The performance security shall remain in force at all times during the term of this Contract and until all payments required under Clause(s) 8.01 are made. Upon any default by Contractor in its obligations under this agreement, State may collect on the performance security to offset the liability of Purchaser to State. Collection on the performance security shall not relieve Contractor of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the agreement because of the default.

8.01 Compensation and Payment.

- (1) Amount of Compensation: Contractor's compensation for services rendered shall be based on the bid submitted on August 20, 2003 as accepted by DNR. Compensation including expenses payable to Contractor for satisfactory performance of the work under this Contract is **estimated** at Dollars, (\$). Actual compensation may be higher based on the actual costs of hauling and tug removal. Total compensation will not exceed Dollars, (\$) unless agreed upon in advance by DNR and Contractor.

- (2) Time of Payment: Progress payments for work performed shall be made in accordance with the following:

After mobilization -- 30% of contract amount

Upon full completion of the work -- the remaining 70% of contract amount.

Payment is timely if DNR pays within 30 days after receiving properly completed invoice vouchers. Payments shall be sent to the address designated by the Contractor. The DNR may terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

- (3) Invoices: Payment for services rendered shall be payable when the Contractor submits properly completed invoice vouchers. The Contractor shall submit invoices in accordance

with the payment schedule. Invoice vouchers shall include information necessary for the DNR to determine the exact nature of all expenditures and shall not exceed the amount agreed to. Each voucher will clearly indicate that it is for the services rendered in performance under this Contract. Requests for payment shall be submitted to the DNR Project Manager.

- (4) Biennial Closures: Under biennial closing procedures, the Contractor must submit all invoices and/or billings for services or material supplied under this Contract through June 30, 2005, to DNR no later than July 10, 2005. If DNR does not receive invoices and bills by July 10, 2005 a considerable delay in payment may result.

9.01 Liquidated Damage. Liquidated damage is set at five-hundred dollars (\$500.00) per day beyond the completion date specified in 4.01. The liquidated damage is not a penalty but rather shall be construed as damage sustained by DNR if work is not timely achieved.

10.01 General Insurance and Bond Requirements. Contractor shall, at all times during the term of this Contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. If Contractor fails to procure and maintain the insurance described below, Contractor shall be in material breach of this Contract. In case of breach, DNR, at its election, shall have the right to terminate the contract or to procure and maintain, at Contractor's expense, substitute insurance with right of offset against any money due Contractor.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the DNR's Risk Manager before the Contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

State of Washington, Department of Natural Resources shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

- a. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
- b. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Within ten (10) business days of successful bid, Contractor shall furnish State of Washington, Department of Natural Resources with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the agreement and, if requested, copies of policies to State. The certificate of insurance shall reference the State of Washington, Department of Natural Resources, and the derelict vessel removal and demolition agreement number.

Contractor shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

Contractor waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this agreement.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to State in this agreement.

The limits of insurance, which may be increased by State of Washington, Department of Natural Resources, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL)/Marine General Liability (MGL) Insurance.

Purchaser shall maintain commercial general liability (CGL) insurance or marine general liability (MGL) insurance covering claims for bodily injury, personal injury, or property damage arising on the property and/or out of Contractor's operations and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL or MGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL or MGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition. MGL insurance shall have no exclusions for non-owned watercraft.

Protection and Indemnity Insurance.

Contractor shall procure and maintain Protection and Indemnity (P and I) insurance, including hull coverage. This insurance will cover all claims with respect to injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the property, including while at a marina and in transit, with limits of liability not less than \$1,000,000. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained.

Workers' Compensation Coverage.

Contractor shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury

(including death) by accident or disease, which exists out of or in connection with the performance of this agreement. Except as prohibited by law, Contractor waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify State. Indemnity shall include all fines, payment of benefits to Contractor or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Longshore and Harbor Worker's Insurance

Certain work or services under this agreement may require insurance coverage for longshore and harbor workers other than seaman as provided in the Longshore and Harbor Worker's Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Jones Act

Certain work or services under this agreement may require insurance coverage for seaman injured during employment resulting from negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Marine Vessel Pollution Liability Insurance. Contractor shall obtain for the duration of the agreement marine vessel pollution liability, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Failure to buy and maintain the required insurance may result in a breach and/or termination of the contract at State's option. Such coverage must provide coverage for on-site clean-up costs and cover gradual and sudden pollution, and includes in its scope of coverage, natural resource damage claims. The State of Washington, Department of Natural Resources shall be named as additional insured. Coverage shall be maintained in an amount of at least:

1. \$1,000,000 each occurrence for contractor's operations at the site(s) identified above, and
2. If the policy contains a general aggregate limit or policy limit, it shall be at least \$5,000,000.

Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:

- a. The Insurance Certificate must state that the insurer is covering hazardous substance removal.

- b. The policy must contain no retroactive date, or the retroactive date must precede abatement services.
- c. Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the agreement Area.
- d. The extended reporting period (tail) must be purchased to cover a minimum of 36 months beyond completion of work.

Environmental Impairment and Contractor's Pollution Liability Insurance. Contractor shall maintain in force for the duration of this contract insurance covering losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this agreement. Insurance shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs, and defense, including cost and expenses incurred in the investigation, defense, or settlement of claims. The insurance policy affording these required coverages shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$2,000,000 if the contract is for the removal of a single vessel. If the contract is for the removal of multiple vessels, the per loss limits remain unchanged, but an annual aggregate of at least \$5,000,000 is required. The insurance policy shall be endorsed to include as insured the State of Washington, Department of Natural Resources, its officers and employees. An insurer acceptable to the Department shall write the policy of insurance.

If coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this agreement.; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 36 months beginning from the time that work under the contract is completed. If the scope of services as defined in the agreement includes the disposal of any hazardous or non-hazardous materials from the job site, the Contractor must furnish to the Department evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this agreement. Coverage certified to the Department must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$5,000,000.

11.01 Complete Agreement in Writing. This Contract contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties.

12.01 Contract Management. The Project Managers for each of the parties shall be the contact persons for this Contract. All communications and billings will be sent to the Project Manager of DNR. The Project Managers shall ensure supervision and coordination, and shall take corrective action as necessary to meet contractual requirements. The Project Managers shall be available at all times during normal working hours throughout the term of the Contract.

13.01 Project Managers.

	Contractor	DNR
Name		
Phone		

IN WITNESS WHEREOF, the parties have executed this Contract.

Dated: _____, 2003

By: _____

Title:

Address:

Telephone:

FTIN:

UBI Number:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 2003

By: _____

FRANCEA MCNAIR

Title: Aquatics Steward

Address: 1111 Washington St. SE
P.O. Box 47001
Olympia, WA 98504-7001

GENERAL TERMS AND CONDITIONS

1.01 Identification. The Contract number must appear on all documents, correspondence, invoices and all other written material submitted or prepared in conjunction with this Contract.

2.01 Independent Capacity of Contractor. The Contractor and its employees or agents performing under this Contract are not employees or agents of the DNR. The Contractor will not represent itself nor claim to be an officer or employee of the DNR or of the State of Washington by reason hereof, nor will the Contractor make any claims of right, privilege or benefit which would accrue to an employee under Washington law.

3.01 Deductions. The DNR shall make no deductions from the stated amount of compensation for income tax, social security taxes, medical insurance, industrial insurance, license fees or deductions of any other kind. Contractor is responsible for all deductions for which the Contractor may be liable.

4.01 Retention of Records. The Contractor shall maintain books, records, documents and other materials which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. These materials shall be available at all reasonable times for inspection, review, or audit by personnel duly authorized by the DNR, and State or federal officials so authorized by law, rule, regulation or contract. The Contractor will retain these materials for six (6) years after settlement or termination.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

5.01 Right of Inspection. The Contractor shall provide right of access to its facilities to the DNR, any of its officers, or to any other authorized agent or official of the State of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

6.01 Close-out. The Contractor must submit all requests for reimbursement for work performed under this Contract to the DNR so that they are received no later than thirty (30) days following the termination of this Contract. If an earlier date is specified in this Contract, the earlier date shall take precedence.

7.01 Non-discrimination. During the performance of this Contract, the Contractor shall comply with all federal and State nondiscrimination laws, regulations and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the DNR.

8.01 Assignability. This Contract, and any claim arising under this Contract, is not assignable or delegable by the Contractor either in whole or in part.

9.01 Subcontracting. Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the DNR.

10.01 Changes/Extras. The DNR may at any time, by written order, make changes within the general scope of this Contract. No payment for changes or extras shall be made unless such changes or extras and the price have been authorized in advance in writing by the DNR Project Manager. No extension of time because of changes or extras will be allowed, unless such extension has been authorized by the DNR Project Manager.

No contract work shall be commenced nor any payment rendered for any work or services to be performed in connection with this Contract until a contract amendment has been signed by both parties.

11.01 Disputes. The DNR Project Manager shall decide disputes concerning questions of fact that are not resolved by agreement. The DNR Project Manager shall furnish the Contractor a written, signed copy of the decision. The DNR Project Manager's decision is final unless the Contractor appeals in writing to the DNR Project Manager within 30 days of receiving the latter's decision. The Commissioner of Public Lands or his authorized representative will decide the appeal. The decision will be final.

This dispute resolution process shall precede any action in a judicial or quasi-judicial tribunal. The Contractor does not waive any right to seek review of the DNR's decision. The Contractor may seek review only in the Superior Court of Thurston County. Pending final decision, the Contractor shall proceed diligently to perform according to the Contract and to DNR's decisions.

12.01 Conflict of Interest. The DNR may, by written notice to the Contractor, terminate this Contract if it is found that there is a violation of the State Ethics Law, chapter 42.52 RCW or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the DNR shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract. The rights and remedies of the DNR provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

13.01 Termination for Convenience. The DNR may terminate this Contract in whole or in part by giving fifteen (15) days' written notice to the Contractor when it is in the best interest of the DNR. If this Contract is so terminated, the DNR shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

14.01 Hold Harmless and Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless DNR, its officials, agents and employees, from and against all claims arising out of or resulting from the performance of the Contract. "Claim" as used in this Contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees. Contractor expressly agrees to indemnify, defend, and hold harmless DNR for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless DNR shall not be eliminated or reduced by any actual or alleged concurrent negligence of DNR or its agents, agencies, employees and officials. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless DNR and its officials, agents or employees.

15.01 Licensing, Accreditation and Registration. The Contractor shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

16.01 Governing Law. This Contract shall be governed by the laws of the State of Washington. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Applicable federal and State statutes and regulations;
- (2) The Special Terms and Conditions as contained in the main contract instrument;
- (3) The General Terms and Conditions contained in this Attachment A;
- (4) Any Statement of Work attached hereto and incorporated by reference herein; and
- (5) Any other provisions or attachments of the Contract whether incorporated by reference or otherwise.

17.01 Jurisdiction/Venue. This Contract shall be construed and interpreted under the laws of the State of Washington and the venue of any action brought under this Contract shall be in the Superior Court for Thurston County. The Contractor, by execution of this Contract, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

18.01 Waiver. A failure by the DNR to exercise its rights shall not constitute a waiver of any rights under this Contract unless stated to be such in writing signed by an authorized representative of the DNR and attached to the original Contract.

19.01 Entire Contract. This document contains all covenants, stipulations and provisions agreed by both parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement representation, promise or agreement not set forth herein except for extension of the completion date. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Contract.

20.01 Severability. If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable

DETAILED WORK DESCRIPTION

Brief History

Starting on or after August 22, 2003, Global Diving & Salvage, Inc (“Contractor”) will be removing the fishing vessel Kathy Ann which sank off the coast of Cherry Point, WA, in Whatcom County, on July 31, 2003. The removal will be completed under the authority of RCW 79.100.

Work Description

Starting on or after August 22, 2003 the Contractor will begin mobilizing. Global will perform the salvage of the F/V Kathy Ann by utilizing a spud derrick with overhead lifting capacity in excess of the anticipated vessel load. The derrick will transit to the vessel site, spud down, and arrange itself for recovery of the vessel. Global’s dive crew will perform a survey to ensure the integrity of the vessel, and confirm the location of the net(s) which posed an entanglement hazard during underwater lightering operations.

Before beginning any work, the Contractor shall inspect the site for utilities and identify any potential utility issues. Contractor is responsible for any damage to utilities.

Contractor shall maintain compliance with all Labor and Industry requirements as well as provide any essential needs to its employees or sub-contractors such as:

- Shade
- Shelter
- Portable toilets

Day One:

One set of lifting straps will be set both forward and aft, and the vessel will be rolled to an upright position (it was lying on her port side) and lifted until the deck breaks the surface. Global will then dewater the vessel using trash pumps, and continue to bring the vessel up. Once the vessel has been stabilized, the straps will be removed, and the Kathy Ann will be towed to Anacortes WA, where she will be lifted out of the water and stored on cribbage in a secure location. All hazardous materials, including hydraulic and engine oil, will remain onboard the vessel. If needed, Global can remove these items once she has reached the surface. Global will have appropriate spill response gear onsite should any pollutants leave the vessel; however, no secondary spillage is expected, less a small amount of fuels that would have been in the engine’s sumps. The project is expected to take one day on-site.

Upland Storage:

Upon transport to Anacortes WA, The vessel will be lifted from the water and placed on cribbing. Final assessment will be made to ensure containment of hazardous material.

Completion of Project:

The project will be considered complete when the vessel is secured at an upland storage location with the storage site protected in the event any hazardous materials are discharged from the vessel while stored. Any cleanup of the site resulting the discharge of hazardous materials due to the negligence of the contractor.

Additional Information

Any and all chainsaw work will be conducted on the upland only.

Contact Information

Global Diving& Salvage: David DeVilbiss (206) 730-9365
 Devon Grennan (206) 963-8132

Department of Natural Resources: Chad Unland (360) 584-2835
 David Roberts (360) 586-2150
 Derrick Toba (360) 902-1109

Hydraulic Project Approval

A hydraulic project approval has been granted (verbally or in writing) by the Washington Department of Fish and Wildlife. A copy has been attached.